

**REMARKS**

This Application has been carefully reviewed in light of the final Office Action transmitted September 3, 2009, At the time of the Office Action, Claims 37 and 40 were pending in this Application. The Office Action rejects Claims 37 and 40. Applicant respectfully requests reconsideration and favorable action in this case.

**Rejections under 35 U.S.C. § 102**

Claims 37 and 40 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,183,695 issued to Ernest J. Wilcox ("*Wilcox*"). Applicant respectfully traverses this rejection.

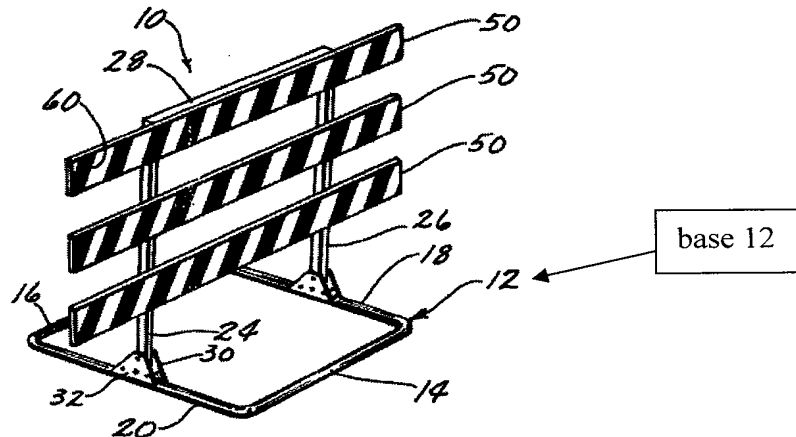
Claims 37 and 40 each recites an upper post member having a weak impact axis and a strong impact axis and a lower post member disposed beneath and spaced apart from said upper post member.

Applicants previously pointed out that *Wilcox* does not disclose, teach, or suggest a lower post member disposed beneath and spaced apart from an upper post member as claimed. In response, the Office Action states that:

Wilcox discloses a breakaway guardrail post comprising a lower post member 12 disposed beneath and spaced apart from the upper post member 24,26 (pole 12 is set up to make or indicate something; and thus constitutes a post, as is consistent with the definition provided by Applicant; Figure 1).

Office Action, page 4. However, the Examiner misrepresents both *Wilcox* and the definition of "post."

First, *Wilcox* does not disclose a "pole 12" as suggested by the Examiner. *Wilcox* discloses a rectangular "**base** 12" that lies horizontally and not vertically. *See Wilcox*, Figure 1 (reproduced below); col. 1, lines 58-62; and col. 2, lines 16-23.



Thus, as evident from *Wilcox's* Figure 1 and disclosure, *Wilcox does not disclose* a "pole 12" as suggested by the Examiner.

Second, as Applicants previously noted, a post member is a vertical or upright member. For example, *The American Heritage College Dictionary* defines a "post" as "1. A long piece of wood or other material set **upright** into the ground to serve as a marker or support. 2. A similar **vertical** support or structure, . . . ." *The American Heritage College Dictionary* (2000), p. 1067 (emphasis added). As another example, *Webster's Third New International Dictionary of the English Language Unabridged* defines "post" as "1 : a piece of timber or other solid substance (as metal) fixed or intended to be fixed firmly in an **upright** position esp. as a stay or support . . . ." *Webster's Third New International Dictionary of the English Language Unabridged* (1981), p. 1771 (emphasis added). The Examiner states that Wilcox's "pole 12 is set up to make or indicate something; and thus constitutes a post, as is consistent with the definition provided by Applicant." Office Action, page 4. However, notwithstanding the fact that Wilcox does not disclose a "pole" 12 (as discussed above), the dictionary definition that the Examiner appears to be referring to states "a **pole** or **stake** set **up**

to mark or indicate." *Webster's*, p. 1771 (emphasis added). This again confirms that a post member is vertical or upright, as opposed to *Wilcox's* horizontal base 12.

It is clear that *Wilcox* does not disclose, teach, or suggest a lower post member disposed beneath and spaced apart from an upper post member as claimed.

Therefore, for at least these reasons, Applicant respectfully submits that these rejections to Claims 37 and 40 be withdrawn and that Applicant's request for interference be granted.

**CONCLUSION**

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. For at least the foregoing reasons, Applicant respectfully requests withdrawal of the rejections and granting of Applicant's request for interference.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 214.953.6511.

Applicant believes there are no fees due at this time; however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
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